

RANDALL B. AIMAN-SMITH #124599  
REED W.L. MARCY #191531  
HALLIE VON ROCK #233152  
CAREY A. JAMES #269270

aiman-smith & marcy

7677 oakport street suite 1020  
oakland california 94621  
t:510.562.6800 f:510.562.6830

Attorneys for Alexander Brown  
and Arik Silva

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION – LOS ANGELES

ALEXANDER BROWN and ARIK  
SILVA, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

ABERCROMBIE & FITCH CO.,  
ABERCROMBIE & FITCH STORES,  
INC., and DOES 1-50, inclusive,

Defendants.

Case No.: 2:14-cv-01242-JGB-VBK

**DECLARATION OF NAMED PLAINTIFF  
ALIK SILVA IN SUPPORT OF PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION**

**Date: February 9, 2015**

**Time: 9:00 AM**

**Courtroom: 1**

**Honorable Jesus G. Bernal**

**DECLARATION OF ARIK SILVA  
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Arik Silva, declare:

1. I am over eighteen years of age. The information contained in this declaration is based on my personal knowledge. If called as a witness, I could and would competently testify to the following matters.

2. I am one of the named Plaintiffs in this action and am providing this declaration in support of Plaintiffs' Motion for Class Certification.

3. I had my deposition taken on November 11, 2014, in this action. I received a copy of the transcript for my deposition, dated November 11, 2014, from my attorney's office, Aiman-Smith & Marcy. True and correct copies of the deposition testimony excerpts referenced herein are attached hereto as Exhibit A.

4. I understand my responsibilities as a named plaintiff in this class action case and that I will be representing all the Abercrombie & Fitch Co. and Abercrombie & Fitch Stores, Inc. ("Abercrombie") workers who were affected by the same employment practices at the Abercrombie owned stores as I was. I am also aware that this is an important position to be in, and I take my role in this case very seriously.

5. I was provided a copy of a document called "Duties of a Named Representative" by my attorneys. I signed this document, which outlined my responsibilities to all of the other class members I would be representing in this case.

6. When I agreed to be a class representative in this case, my attorneys, Aiman-Smith & Marcy, advised me that I would be a named plaintiff in this case, along with Alex Brown, against Abercrombie. I understood, in filing this case, that we would be making claims about Abercrombie not providing adequate rest breaks, pressuring young people who were only being paid minimum wage at the time, me included, to buy Abercrombie clothing as a requirement of working there, and for other violations of California law.

/ / /

/ / /

1           7.       One of the main reasons I decided to be a class representative in this case was  
2 because working for Abercrombie became a hardship for me and, as I observed, for my fellow  
3 workers, monetarily. At the time, I felt by becoming a named plaintiff in this case against  
4 Abercrombie, I would, hopefully, recoup the money I and others were forced to spend on  
5 Abercrombie clothes, several times a year. You couldn't work for Abercrombie without  
6 having to spend a good amount of your hard earned money on Abercrombie clothes for work.

7           8.       I also agreed to be a class representative because I believed that other employees  
8 and I were not provided rest breaks we were entitled to as a result of Abercrombie's rest break  
9 policies.

10          9.       I worked for Abercrombie from approximately October 2012 to March 2014, at  
11 the Abercrombie & Fitch store in the Third Street Promenade, located in Santa Monica,  
12 California. In that time, I observed that the other workers employed there were subject to the  
13 same or similar Abercrombie practices as I was. We all worked similar jobs and were treated  
14 the same. I am aware now that I and other persons employed by Abercrombie were entitled to  
15 legally compliant rest breaks, were entitled to be paid minimum wages, were entitled to have  
16 the Abercrombie clothes we were forced to buy and wear as a condition of our employment  
17 paid for by Abercrombie, and were entitled to other benefits, but never received them.

18          10.      As a class representative, I understand that I am a "fiduciary litigant." I  
19 understand that this means that I must consider the interests of the class as if they were my own  
20 interests and that I cannot put my own interests before those of the class as a whole.

21          11.      I know of no conflicts that I have with any class member in this case.

22          12.      From the time I decided to be a Named Representative in this case and until now,  
23 I have wanted to represent and help the other Abercrombie workers who were subject to the  
24 same policies and practices that are claimed in this lawsuit.

25          13.      As a class representative, I have always made myself available to my attorneys in  
26 this case. Most of our communications have been through emails or telephone calls, and I have  
27 also met in-person with them. My attorneys have kept me abreast of all goings on in this case,  
28 and I believe I have a good grasp on where we are at this point in the case. I have been, and

1 continue to be, committed to this case for all of the workers who are part of this class action,  
2 and not just me.

3 14. I understand the importance in being a representative for all of the workers in the  
4 class and I have done my best to uphold this responsibility by being available at all times for  
5 my attorneys, whenever they had questions about the situations and policies enforced on all  
6 employees by Abercrombie. This is a responsibility I take very seriously, and I will continue  
7 to uphold my responsibilities to the class as a named representative if this case is certified,  
8 including continue to work with class counsel and to prepare for trial.

9 15. I made myself available for having my deposition taken in November, and have  
10 responded to numerous interrogatories and requests for production of documents. To my  
11 knowledge, I have provided true and correct answers to these interrogatories and have  
12 produced all documents in my possession that were in any way responsive to those requests  
13 after a diligent search.

14 16. Anytime I received a voicemail message or an email from my attorneys with  
15 general questions about workplace practices at Abercrombie, I always answered them  
16 promptly.

17 17. I was paid minimum wage while working for Abercrombie and believe that this  
18 was standard for my positions as a Model, which is a sales associate, and as an Impact  
19 associate, which is in the stock room.

20 18. I do not recall being told of any changes to Abercrombie's rest break policy  
21 while I worked there. In my experience, Abercrombie's rest break policy was applied the same  
22 in my store throughout my employment. I understood Abercrombie's rest break policy, as it  
23 was applied while I worked for Abercrombie, was that 10-minute rest breaks were not  
24 provided if you worked more than 5 hours. Although the rest break policy may have changed  
25 at some point, I don't recall any store manager informing me of this change and there certainly  
26 were no changes in the application of rest breaks on the shifts I worked while employed by  
27 Abercrombie.

28 19. Abercrombie's Look Policy was consistent throughout my employment. In order

1 to work at Abercrombie, it was my understanding and experience that all employees had to  
 2 wear Abercrombie clothing and to match the current season's look as set out in the AAA Style  
 3 Guides.

4 20. During my deposition, I was asked about and testified about the unlawful rest  
 5 break policies applied at Abercrombie. For example, *see* Exhibit A, with relevant testimony  
 6 copied below.

7 "Q. ...what do you believe you understand regarding  
 practices and policies at Hollister...

8 A. It was like the same as Abercrombie.

9 Q. In what regard?

10 A. Breaks, clothing, etcetera.

11 Q. What about breaks and clothing?

12 A. It was ... my understanding that they got the same  
 kind of policy...

13 Q. What do you mean by that?

14 A. Whenever you work a 4-hour shift, you usually get  
 15 10 paid. And when you work 5 and above, you get a  
 16 30 paid. And you are supposed to get like a 10-minute  
 17 paid, but she never got that either. P. 18:18-19:7.

18 "A. It was probably ... the first two weeks I was  
 19 working, and I worked a, like, 6-hour day, and I asked  
 20 - I personally asked Bert if - if I could go take my  
 21 break because it was, like - I think it was, like - must  
 22 have been, like, 5 hours or something like that and, he  
 23 said, "No." And then he made a remark about being  
 24 hungover, and he - he didn't have time to deal with  
 my - deal with my shit, his words.

25 ...  
 Q. Did you complain to anybody?

26 A. Yes.

27 Q. Who did you complain to?

28 A. ... I don't recall.

Q. To another manager in the store?

A. Yes.

Q. What did you say?

A. 'I did not get my break,' and I sad that - probably  
 said that towards, like, hour 5. And then once I  
 actually left, I was leaving the store and getting my  
 bag check. Ya, I told again, and they didn't really say  
 anything back." P. 41:18-43:9.

1 "Q. Was there ever a shift that you worked during the  
2 entirety of your employment during which you  
received two rest periods, two 10-minute rest breaks?

3 A. For 5 hours and above?

4 Q. Just any shift that you got two rest periods?

5 A. No.

6 Q. Was there ever a shift where you received both a  
rest period and a meal break?

7 A. No.

8 Q. You did get your meal breaks, though, on your  
shifts of greater than 5 hours, right?

9 A. The 30 unpaid, yes.

10 ...  
11 Q. Do you, personally, know whether anyone else  
12 working in the store during your employment ever  
13 received two rest periods on any shifts greater than 6  
hours?

14 A. No. Nobody that I know of got more than two  
breaks on a 6-hour shift." P. 54:10-55:24.

15 "A. Well, my understanding, when you work a shift  
16 that is 5 hours, you get a 10 paid and a 30 unpaid. And  
I never got that extra break, or rest period.

17 Q. The 10-minute rest period?

18 A. Yes.

19 Q. When you would work a 5-hour shift?

20 A. Yes, 5 and above..." P. 85:8-16.

21 Q. Okay. My question that I just asked relates to shifts  
that you worked that were longer than 4 hours.

22 A. So, 5 hours and above?

23 Q. Well, anything longer than 4 hours.

24 A. Okay.

25 Q. All right. Do you recall ever asking a manager  
26 during any one of those shifts if you could go take a  
break, a rest break?

27 A. Yes.

28 Q. Okay.

A. And the answer was no.

Q. Okay. How many times did you ask that?

A. I think just one.

Q. Okay. And who did you ask?

A. Can't specifically remember. It was probably  
whatever head manager was at that time.

Q. And what did you ask?

A. I asked if -- if we got breaks regarding... if we got  
breaks regarding... like for 5 -- for 4 hours and above  
more, if we got like a 10-minute break plus an unpaid,  
and they said, no, you just get a 30." P. 232:11-233:6.

"Q. Can you tell me whether, during your employment  
at Abercrombie, you ever observed an Abercrombie  
employee taking two 10-minute rest periods in the  
same  
shift?

A. No.



1 Q. Okay. Can you tell me whether, during your  
2 employment at Abercrombie, you ever observed an  
3 Abercrombie employee take a 10-minute rest break  
4 and a 30-minute meal period during the same shift?

5 A. No.

6 Q. Okay. And I would just like to clarify, for both of  
7 those last questions, were you saying, no, you had  
8 never observed that or no, you can't tell me?

9 A. No, I never observed that." P. 237:8-21.

10 21. During my deposition, I spent an enormous amount of time discussing the  
11 pressure put on me and my co-workers to purchase and wear Abercrombie clothes during  
12 working hours. We were called "Models" for a reason. For example, *see* Exhibit A, with  
13 relevant testimony copied below.

14 "Q. What happened after the interview?

15 A. We were hired, and then we had to try on clothes."  
16 P. 29:19-21.

17 "A. ...even though it says we are not -- we don't have  
18 to buy the clothes, Abercrombie's policy that was  
19 enforced was we did have to buy the AAAs or we  
20 weren't allowed to work or we would be penalized.

21 Q. When you say it says that we don't have to buy the  
22 clothes, you are talking about the company's written  
23 policy?

24 A. Written policy, yes.

25 Q. And you are saying that your experience, working  
26 under the managers in the one store, was what?

27 A. That we -- we had to wear the AAAs, the  
28 Abercrombie clothing, in order to work or we would  
be sent home or penalized.

Q. How would be penalized?

A. Either we would be getting, like, written up or so or  
we would just be get sent home. Majority of the time,  
it would be sent home from what I remember.

Q. Well, were you ever sent home?

A. Yes.

Q. How many times?

A. I can't fully recall. I know it was a couple.

Q. Okay. Well a couple, like less than three?

A. I would probably say about three, I believe.

Q. Your testimony is you were actually sent home --

A. Yes.

Q. -- to change?

A. Majority of the time, uhm, by the time that they  
acknowledged it, it was already too late, and they just  
said "stay home" instead of, like, go home to change  
and coming back.

Q. When you say that you had to wear the AAAs --

A. Yes, Abercrombie clothing, AAAs.

Q. What are you referring to?

1 A. The AAA Guide thing. The clothing that was, like,  
2 what was in style, what the models and impact was  
supposed to wear.

3 Q. All right. Did anybody specifically tell you, "Arik,  
4 you have to buy and wear AAA clothing"?

5 A. Yes.

6 Q. Okay. Who told you that?

7 A. Was several managers.

8 Q. Can you name one?

9 A. Keegan.

10 Q. And sitting here today, I want you to tell me as  
11 specifically as you can what Keegan said in that  
12 regard?

13 A. 'You need to wear AAA clothing. You have to or  
14 you get sent home.'

15 ...  
16 Q. Okay. Before we broke, I asked you specifically  
17 what Keegan said regarding AAA clothing. Remember  
18 that?

19 A. Ya.

20 Q. And you said that he said you have to buy the AAA  
21 clothing or you get sent home. Essentially, that's what  
22 you said, right?

23 A. Essentially.

24 Q. All right. I -- I just want to be clear, you remember  
25 him uttering those specific words or was that the  
26 impression?

27 A. It was the -- it was words of that kind. I don't know  
28 if it was specifically those words. It was just, what I  
remember, she said pretty much, 'If you don't wear  
AAA clothing, you get sent home. You need to wear  
AAA clothing to work. The clothes need to be  
Abercrombie.'" P. 85:8-88:17.

"Q. So you testified that -- that, at your store, your  
manager told you that you needed to wear AAA  
clothing?

A. Upon my orientation, I remember Keegan was  
doing orientation, and she said you needed to wear  
AAA clothing to work." P. 96:16-21.

"Q. We'll look at your purchase logs and compare  
them up with the AAA Style Guide, but is it your  
testimony that you were or needed to buy something  
each time a AAA Style Guide came out?

A. Typically, yes.

Q. Well, was there ever an exception to that?

A. I believe with jeans, ya, because usually the jeans  
would follow through, but usually you always had to  
buy something that was -- that came out with the new  
season in the new AAA Guide." P. 99:16-25.

"Q. Okay. Did you, yourself, ever wear any non-  
Abercrombie clothing to work?

A. I attempted, but I was denied.



1 Q. What do you mean you attempted, but were denied?

2 A. I would try to wear a pair of -- originally, I tried to  
3 wear a pair of, uhm... just like regular, like, dark, dark-  
ish blue jeans, didn't have any logos or anything on it.  
4 And they said that wasn't like the correct jean to wear.  
I had to wear Abercrombie jeans.

5 Q. Okay. How many times did that happen?

6 A. For the jeans, just one time.

7 Q. What type of jeans were you trying to wear?

8 A. They were just, like, regular, dark, blue jeans.

9 Q. Do you know the brand?

10 A. No. I don't remember specifically remember what  
11 brand it was.

12 Q. Do you know whether they had any visible stitching  
on the back?

13 A. ... actually, now that I think of it, no. It was just --  
14 it was a pair my mom sent me. I told her I needed -- I  
needed jeans, and she sent me those.

15 Q. Okay. Well, you don't know -- sitting here today,  
you can't tell me whether they had any visible stitching  
or patch or anything on the back?

16 A. There wasn't no -- there wasn't, like, patches or  
17 anything. It was just -- it was, like, my mom  
sometimes will buy very, just like, generic stuff, and it  
18 was -- I told her in getting jeans to buy something that  
didn't have any logos or something, like, weird,  
19 crazy stitching or anything like that. Just regular, plain  
jeans.

20 ...  
21 Q. ... Did you actually wear those jeans to work or did  
you ask if you could wear them?

22 A. I tried to wear the jeans to work.

23 Q. What do you mean you tried? You showed up for  
work?

24 A. I showed up for work wearing the jeans. They said,  
"No. Change your jeans."

25 Q. So what did you do?

26 A. I put on my Abercrombie jeans.

27 Q. You brought your Abercrombie jeans with you?

28 A. Ya.

...  
Q. Okay. Any other occasion that you wore non-  
Abercrombie clothing to work?

A Yes... I tried to wear... high top Converse®, and I  
got sent home, but it was,... it was high-top Converse®  
to the point where, like, you have to flip your jeans a  
certain way,  
and I'm, like, do it, and I bought jeans that were long,  
Abercrombie jeans that were long enough that went  
pretty far down and didn't look -- you couldn't tell the  
difference if I was wearing low tops or high tops. But I  
went to go bend down and tie my shoe, and I guess the  
thing came way up, and I was wear high tops. They  
were black and white, and they sent me home.

Q. To change?

1 A. No. They just sent me home. They said, "Don't  
come back."

2 Q. Okay. Any other situations?

3 A. No. I kind of just learned my lesson after that and  
then just wore Abercrombie clothing.

4 ...  
Q. All right. Did you ever see anybody else at work  
wear non-A&F clothes?

5 A. John -- a guy named Johnny, he tried, and he got  
sent home.

6 Q. Do you know what he tried to wear?

7 A. Jeans. It was -- from what I remember with the  
jeans, they just looked like regular, dark, blue jeans.  
8 There wasn't anything crazy about them or patches or  
anything. And they said, "No, you can't wear those,"  
and they sent him home.

9 Q. Okay. Anybody else?

10 A. Let's see. I believe Alex Brown, he tried to wear  
shorts that were actually Abercrombie, and they tried  
11 to send him home because they weren't, like, within  
that style, but he protested, and he got to wear the  
shorts. Other than that, he wasn't sent home, though,  
12 other than Barry -- or Johnny, he got sent home.

13 ...  
Q. All right. Sitting here today, are you able to  
definitively tell me one way or another whether  
14 anybody in the store working at the same time period  
that you did ever wore non-A&F clothing to work  
15 without issue?

16 A. No. Every time I ever heard of anyone try to wear  
non-A&F clothing, they got sent home.

17 Q. Okay. Well, you don't know whether that holds true  
across all employees that worked at the same time  
during your employment, correct?

18 A. Yes. I mean, I've seen -- I've heard, like, other  
employees, like, "Oh, what happened to him?" "He got  
19 sent home. He wasn't wearing A&F clothing." So all  
the managers in the store enforce that kind of rule...

20 ...  
Q. I'm just -- you admit that it's possible that during  
the course of your employment, somebody wore non-  
21 A&F clothing to work without issue?

22 A. I've never seen it." P.104:5-109:3.

23 "Q. Did you review the style guides when they would  
come out?

24 A. The AAA Guides?

Q. AAA Style Guides?

25 A. Whenever we were told that we had to purchase the  
new ones, ya.

26 Q. Well, you know that the AAA Style Guides were  
issued several times a year, correct?

27 A. Yes.

28 / / /

1 Q. Okay. So did you -- did you review the guide each  
time it came out --

2 ...  
3 A. Just when my knowledge was -- or when the  
knowledge was given to me that we had to update our  
clothing, then I reviewed them.

4 Q. And when you reviewed them, whenever you did  
so, you actually held the physical document in your  
hand and flipped through it?

5 A. Yes. They would post it on the corkboard." P.  
6 135:22-136:16.

7 "Q. Why did you decide to purchase the jeans that you  
bought and the shirt that you bought?

8 A. It was -- Kavon was with me, I believe.

9 Q. I'm sorry?

10 A. I believe it was either Kavon or one of the  
managers would walk around with us and then it was  
just -- I just grabbed something.

11 ...  
12 Q. Okay. So you just picked whatever you felt like  
picking?

13 A. I picked the AAAs that were available. Whatever  
was available AAA-wise, I grabbed those." P. 150:10-  
151:4.

14 "A. ...I bought clothes when they told me I had to buy  
clothes. When they said, "You need to change your  
shirt, go pick out a new one," I did. If they didn't tell  
me that, I didn't buy it. I bought -- I bought AAAs  
because I had to. If I didn't have that -- if I didn't have  
that, whatever -- whatever piece of clothing they said I  
needed, then I would get sent home.

18 ...  
19 A. When they said, "You need to buy this" -- my  
orientation, they said, "You need to buy some clothes  
in order to work." I said, "Okay." So I bought these.  
When they said, "You need to change that," I changed  
it. When they said, "You need to change your jeans," I  
changed the jeans.

21 Q. Okay.

22 A. When -- the times -- said you can't wear the denim  
shirt no more, you need to wear a different shirt, I'm  
pretty sure I bought the HTR gray shirt." P. 179:9-  
23 181:2.

24 "Q Okay. Can you tell me whether women working  
and girls working at the Abercrombie store, which you  
worked, were required to wear AAAs?

26 / / /

27 / / /

28 / / /

1 A. Yes.

2 Q Okay. How do you know that?

3 A. The -- I mean, the women and the guys worked  
4 together for orientation, and they -- they told everyone  
5 you have to get AAAs." P. 238:7-25.

6 I certify under penalty of perjury under the laws of the United States that the foregoing  
7 is true and correct.

8 Executed on Jan 11, 2015, at Santa Monica, California.

9   
10 ALIK SILVA

**EXHIBIT A**

ARIK SILVA - 11/11/2014

Page 1

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALEXANDER BROWN and ARIK )  
SILVA, individually and on )  
behalf of class of similarly )  
situated individuals, )

Plaintiffs, )

-vs-

Abercrombie & Fitch® CO.; )  
Abercrombie & Fitch® STORES, )  
INC., and DOES 1-50, )  
inclusive, )

Defendants. )

) CASE NO.

) 2:14-CV-01242-GAF-

) VBK

DEPOSITION OF ARIK SILVA

TUESDAY, NOVEMBER 11, 2014

9:04 a.m.

REPORTED BY: ERIKA SJOQUIST, C.S.R., R.P.R., C.R.R.  
C.S.R. No. 12350



ARIK SILVA - 11/11/2014

Page 18

1 Q Just to try to narrow our focus today and speed  
2 things along. I just want to establish, you don't have  
3 any personal knowledge about how any employment  
4 practices or policies are implemented at any of the  
5 company's Hollister stores, correct?

09:16:37

6 A I do. I do. I had a girlfriend who worked at  
7 a Hollister.

8 Q Where was that?

9 A It would be Visalia, California.

10 Q What was her position?

09:16:57

11 A I don't really recall. I just know she worked  
12 at Hollister.

13 Q You don't know what she did?

14 A No. Unfortunately not.

15 Q Do you know if she was a manager or an hourly  
16 employee?

09:17:09

17 A I know she was an hourly employee.

18 Q All right. Well, what do you believe you  
19 understand regarding practices and policies at Hollister  
20 vis-à-vis this girlfriend?

09:17:31

21 A It was like the same as Abercrombie.

22 Q In what regard?

23 A Breaks, clothing, etcetera.

24 Q What about breaks and clothing?

25 A It was, uhm, my understanding that they got the

09:17:47

ARIK SILVA - 11/11/2014

Page 19

1 same kind of policy, want to call it, that we got at  
2 Abercrombie in Santa Monica.

3 Q What do you mean by that?

4 A Whenever you work a 4-hour shift, you usually  
5 get 10 paid. And when you work 5 and above, you get a  
6 30 paid. And you are supposed to get like a 10-minute  
7 paid, but she never got that either.

09:18:02

8 Q When did you talk to her about that?

9 A I don't really recall.

10 Q Is this woman still your girlfriend?

09:18:19

11 A No.

12 Q Okay. When did the relationship end?

13 A I guess she -- she moved back to Mexico. And  
14 so, it must have been... I guess July.

15 Q July of what year?

09:18:38

16 A 2014.

17 Q Do you know when she left the company's  
18 employment?

19 A Unfortunately, I don't. Once -- we stopped  
20 talking after a while, and it was just kind of -- we  
21 never talked about anything.

09:18:46

22 Q When do you believe you talked to her about her  
23 experiences at Hollister?

24 A Uhm... it was probably June, around June, I  
25 guess.

09:19:05

ARIK SILVA - 11/11/2014

Page 29

1 Q People that are responsible for -- well, the  
2 part-time associates that are responsible for working  
3 the sales floor, right?

4 A Yes.

5 Q Models do things like help customers select  
6 clothes?

09:30:24

7 A Yes.

8 Q Get them to fitting rooms?

9 A Yes.

10 Q Ring them up?

09:30:32

11 A Yes.

12 Q Clean the store?

13 A Yes.

14 Q Fold clothes?

15 A Yes.

09:30:38

16 Q Generally, the same types of duties that you  
17 have at Lush Cosmetics?

18 A Ya.

19 Q What happened after the interview?

20 A We were hired, and then we had to try on  
21 clothes.

09:31:10

22 Q Did you, at any point in time, have an  
23 orientation?

24 A Yes.

25 Q Okay. And do you remember at that orientation

09:31:27

ARIK SILVA - 11/11/2014

Page 41

1 after high school. Ya, she made -- she made some weird  
2 remark about that.

3 Q Do you remember the remark or no?

4 A I don't recall.

5 Q All right. Did you work with Roisin at all?

09:47:11

6 A That name doesn't sound familiar.

7 Q Bert, you told me about?

8 A Yes.

9 Q Did you get along with Bert all right?

10 A I was -- I saw Bert only a few times, and that  
11 was when I first started working at Abercrombie. Other  
12 than that, he -- from my knowledge, he was fired. And  
13 then I never saw him again after that.

09:47:28

14 Q All right. Well, did you or did you not have  
15 any interactions with him on the few times that you saw  
16 him?

09:47:46

17 A I did.

18 Q All right. And did you have any issue or  
19 problem with him based on those interactions?

20 A Yes.

09:47:55

21 Q What?

22 A It was probably, uhm... I don't remember. It  
23 was, like, my second shift, third shift. It was  
24 probably, like, the first two weeks I was working, and I  
25 worked a, like, 6-hour day, and I asked -- I personally

09:48:08

ARIK SILVA - 11/11/2014

Page 42

1 asked Bert if -- if I could go take my break because it  
2 was, like -- I think it was, like -- must have been,  
3 like, 5 hours or something like that, and he said, "No."  
4 And then he made a remark about being hungover, and he  
5 -- he didn't have time to deal with my -- deal with my  
6 shit, his words.

09:48:30

7 Q Were you asking to take your first break or a  
8 second break?

9 MR. JAMES: Objection. Vague and ambiguous.

10 THE WITNESS: I don't recall.

09:48:48

11 BY MR. GARCIA:

12 Q You don't remember?

13 A No, I don't remember.

14 Q All right. Well, do you remember if you ended  
15 up taking a shift -- a break that shift?

09:48:56

16 MR. JAMES: Objection. You mean a meal break  
17 or a rest break?

18 BY MR. GARCIA:

19 Q Did you take any type of break that shift?

20 A No.

09:49:04

21 Q No meal or rest break?

22 A No.

23 Q Did you complain to anybody?

24 A Yes.

25 Q Who did you complain to?

09:49:16

ARIK SILVA - 11/11/2014

Page 43

1 A Uhm... I don't recall.

2 Q To another manager in the store?

3 A Yes.

4 Q What did you say?

5 A "I did not get my break," and I said that -- 09:49:26  
6 probably said that towards, like, hour 5. And then once  
7 I actually left, I was leaving the store and getting my  
8 bag check. Ya, I told again, and they didn't really say  
9 anything back.

10 Q When you say you didn't get your break, when 09:49:44  
11 you -- when you reported that to a manager, did you  
12 specify as between your rest or meal break?

13 A I don't recall.

14 Q Do you recall whether you were -- received  
15 pay -- 09:50:04

16 A I don't recall.

17 Q -- as a result of not getting your break,  
18 additional pay?

19 A I don't recall.

20 Q So you don't know if anything was done in 09:50:11  
21 response to your report --

22 A Ya.

23 Q -- correct?

24 A Yes.

25 Q All right. Was that the only situation that 09:50:20



ARIK SILVA - 11/11/2014

Page 54

1 MR. JAMES: You can take time to read the  
2 document before you answer, if you would like.

3 BY MR. GARCIA:

4 Q Ya, I'm not -- sure.

5 A Ya.

10:02:43

6 Q All right. And you told me earlier than on  
7 shifts you worked 4 hours or less, you would get your  
8 10-minute rest break, right?

9 A 10-minute paid, yes.

10 Q Was there ever a shift that you worked during  
11 the entirety of your employment during which you  
12 received two rest periods, two 10-minute rest breaks?

10:02:59

13 A For 5 hours and above?

14 Q Just any shift that you got two rest periods?

15 A No.

10:03:15

16 Q Was there ever a shift where you received both  
17 a rest period and a meal break?

18 A No.

19 Q 10-minute break and a meal break?

20 A No.

10:03:25

21 Q You did get your meal breaks, though, on your  
22 shifts of greater than 5 hours, right?

23 A The 30 unpaid, yes.

24 Q Do you know -- do you, personally, know whether  
25 anybody else working in the store during your employment

10:04:09

ARIK SILVA - 11/11/2014

Page 55

1 ever received two rest periods on any shifts greater  
2 than 6 hours?

3 A No.

4 Q You don't know one way or the other?

5 A Can you repeat the question?

10:04:29

6 Q Sure.

7 Do you, personally, know whether anyone else  
8 working in the store during your employment ever  
9 received two rest periods on any shifts greater than  
10 6 hours?

10:04:41

11 A No. Nobody that I know of got more than two  
12 breaks on a 6-hour shift.

13 Q Okay. I don't know that your answer is  
14 responsive here. Just stay with me.

15 Do you, personally, know whether anyone else  
16 working in the store during your -- during your  
17 employment, all right, ever received two breaks, two  
18 rest breaks on shifts greater than 4 hours? Do you know  
19 one way or the other?

10:05:05

20 A No, I do not.

10:05:23

21 Q All right. And I take it your answer would be  
22 the same with respect to shifts 6 hours or more,  
23 correct?

24 A Yes.

25 Q All right. How would you go about taking your

10:05:34

ARIK SILVA - 11/11/2014

Page 85

1 Q All right. Well, do you know anything about  
2 this supposed circumstance other than what somebody told  
3 you secondhand?

4 A No.

5 Q All right. You, yourself, don't believe you  
6 were ever paid late, correct?

7 A From my knowledge, yes.

8 Q All right. Why don't you tell me in your own  
9 words why it is you're suing Abercrombie?

10 A Well, my understanding, when you work a shift  
11 that is 5 hours, you get a 10 paid and a 30 unpaid. And  
12 I never got that extra break, or rest period.

13 Q The 10-minute rest period?

14 A Yes.

15 Q When you would work a 5-hour shift?

16 A Yes, 5 and above. And then I guess it was  
17 also, uhm, us, uhm, even though it says we are not -- we  
18 don't have to buy the clothes, Abercrombie's policy that  
19 was enforced was we did have to buy the AAAs or we  
20 weren't allowed to work or we would be penalized.

21 Q When you say it says that we don't have to buy  
22 the clothes, you are talking about the company's written  
23 policy?

24 A Written policy, yes.

25 Q And you are saying that your experience,

ARIK SILVA - 11/11/2014

Page 86

1 working under the managers in the one store, was what?

2 A That we -- we had to wear the AAAs, the  
3 Abercrombie clothing, in order to work or we would be  
4 sent home or penalized.

5 Q How would be penalized?

10:53:14

6 A Either we would be getting, like, written up or  
7 so or we would just be get sent home. Majority of the  
8 time, it would be sent home from what I remember.

9 Q Well, were you ever sent home?

10 A Yes.

10:53:28

11 Q How many times?

12 A I can't fully recall. I know it was a couple.

13 Q Okay. Well a couple, like less than three?

14 A I would probably say about three, I believe.

15 Q Your testimony is you were actually sent

10:53:38

16 home --

17 A Yes.

18 Q -- to change?

19 A Majority of the time, uhm, by the time that  
20 they acknowledged it, it was already too late, and they  
21 just said "stay home" instead of, like, go home to  
22 change and coming back.

10:53:47

23 Q When you say that you had to wear the AAAs --

24 A Yes, Abercrombie clothing, AAAs.

25 Q What are you referring to?

10:54:08

ARIK SILVA - 11/11/2014

Page 87

1 A The AAA Guide thing. The clothing that was,  
2 like, what was in style, what the models and impact was  
3 supposed to wear.

4 Q All right. Did anybody specifically tell you,  
5 "Arik, you have to buy and wear AAA clothing"?

10:54:24

6 A Yes.

7 Q Okay. Who told you that?

8 A Was several managers.

9 Q Can you name one?

10 A Keegan.

10:54:32

11 Q And sitting here today, I want you to tell me  
12 as specifically as you can what Keegan said in that  
13 regard?

14 A "You need to wear AAA clothing. You have to or  
15 you get sent home."

10:54:43

16 I'm sorry to stop it again, but I have to use  
17 the bathroom. I'm kind of sick right now, so.

18 MR. GARCIA: Okay.

19 THE VIDEOGRAPHER: Off the record. The time is

20 10:54.

10:54:54

21

22 (Off the record.)

23

24 THE VIDEOGRAPHER: Back on the record at 11:03.

25 BY MR. GARCIA:

11:03:32

ARIK SILVA - 11/11/2014

Page 88

1 Q Okay. Before we broke, I asked you  
2 specifically what Keegan said regarding AAA clothing.

3 Remember that?

4 A Ya.

5 Q And you said that he said you have to buy the 11:03:42  
6 AAA clothing or you get sent home. Essentially, that's  
7 what you said, right?

8 A Essentially.

9 Q All right. I -- I just want to be clear, you  
10 remember him uttering those specific words or was that 11:03:56  
11 the impression?

12 A It was the -- it was words of that kind. I  
13 don't know if it was specifically those words. It was  
14 just, what I remember, she said pretty much, "If you  
15 don't wear AAA clothing, you get sent home. You need to 11:04:08  
16 wear AAA clothing to work. The clothes need to be  
17 Abercrombie."

18 Q And again, my question is, do you remember  
19 those specific words or was that the impression that you  
20 had after speaking with her? 11:04:23

21 MR. JAMES: Objection. Asked and answered.

22 THE WITNESS: It was around those specific  
23 words.

24 BY MR. GARCIA:

25 Q So with respect to the AAA clothing, what did 11:05:09



ARIK SILVA - 11/11/2014

Page 96

1 probably have seen it; just don't remember.

2 Q Skirts?

3 A Actually, no. I never really seen a lady  
4 wearing a skirt at a retail shop.

5 Q All right. How about a dress?

11:12:43

6 A Yes.

7 Q Women wear jeans --

8 A Yes, women wear jeans.

9 Q -- at other retailers?

10 A Yes, women wear jeans at retail stores.

11:12:51

11 Q How about, like, button-down-type shirts?

12 A Uhm, the only place I ever seen, really seen a  
13 girl wear, like, a button-down was like at Starbucks.

14 Q So yes?

15 A If Starbucks is a retailer, ya.

11:13:06

16 Q So you testified that -- that, at your store,  
17 your manager told you that you needed to wear AAA  
18 clothing?

19 A Upon my orientation, I remember Keegan was  
20 doing orientation, and she said you needed to wear AAA  
21 clothing to work.

11:13:45

22 Q Okay. That's your testimony, right?

23 A Yes.

24 Q But it's true, is it not, that Keegan never  
25 said you need to wear any particular outfit, correct?

11:13:55

ARIK SILVA - 11/11/2014

Page 99

1 A Nonspecific, within the AAAs. It had to be --  
2 it had to be in the AAAs, but it wasn't specifically  
3 something in the AAAs. Besides Natalia encouraging one  
4 time that on the AAA there was a shirt, "You should get  
5 that one," I got that one, because she encouraged it,  
6 but no, not outside the AAAs.

11:16:22

7 Within -- ya, they never said anything about,  
8 like, "Oh, you have to specifically get that one." As  
9 long as it was AAA, and it was, like, within the style  
10 season.

11:16:34

11 Q So your testimony is as long as something was  
12 within the AAA and generally consistent with the current  
13 season, you could choose among the many options what you  
14 wanted to wear?

15 A Yes.

11:17:20

16 Q We'll look at your purchase logs and compare  
17 them up with the AAA Style Guide, but is it your  
18 testimony that you were or needed to buy something each  
19 time a AAA Style Guide came out?

20 A Typically, yes.

11:17:54

21 Q Well, was there ever an exception to that?

22 A I believe with jeans, ya, because usually the  
23 jeans would follow through, but usually you always had  
24 to buy something that was -- that came out with the new  
25 season in the new AAA Guide.

11:18:08

ARIK SILVA - 11/11/2014

Page 104

1 clothing" -- I'm sorry -- "wear clothes that  
2 are similar to the brand."

3 Do you see that?

4 A Yes.

5 Q Okay. Did you, yourself, ever wear any  
6 non-Abercrombie clothing to work?

11:22:20

7 A I attempted, but I was denied.

8 Q What do you mean you attempted, but were  
9 denied?

10 A I would try to wear a pair of -- originally, I  
11 tried to wear a pair of, uhm... just like regular,  
12 like, dark, dark-ish blue jeans, didn't have any logos  
13 or anything on it. And they said that wasn't like the  
14 correct jean to wear. I had to wear Abercrombie jeans.

11:22:38

15 Q Okay. How many times did that happen?

11:22:54

16 A For the jeans, just one time.

17 Q What type of jeans were you trying to wear?

18 A They were just, like, regular, dark, blue  
19 jeans.

20 Q Do you know the brand?

11:23:04

21 A No. I don't remember specifically remember  
22 what brand it was.

23 Q Do you know whether they had any visible  
24 stitching on the back?

25 A Uhm, there was, uhm, no -- actually, now that I

11:23:12

ARIK SILVA - 11/11/2014

Page 105

1 think of it, no. It was just -- it was a pair my mom  
2 sent me. I told her I needed -- I needed jeans, and she  
3 sent me those.

4 Q Okay. Well, you don't know -- sitting here  
5 today, you can't tell me whether they had any visible 11:23:27  
6 stitching or patch or anything on the back?

7 A There wasn't no -- there wasn't, like, patches  
8 or anything. It was just -- it was, like, my mom  
9 sometimes will buy very, just like, generic stuff, and  
10 it was -- I told her in getting jeans to buy something 11:23:41  
11 that didn't have any logos or something, like, weird,  
12 crazy stitching or anything like that. Just regular,  
13 plain jeans.

14 Q Well, sitting here today, you are not able to  
15 describe the stitching contained on those jeans, 11:23:53  
16 correct?

17 A Ya.

18 Q Correct?

19 A Exactly.

20 Q All right. All right. On any other occasion, 11:23:57  
21 did you wear any non-Abercrombie clothing -- well,  
22 strike that.

23 Did you actually wear those jeans to work or  
24 did you ask if you could wear them?

25 A I tried to wear the jeans to work. 11:24:08

ARIK SILVA - 11/11/2014

Page 106

1 Q What do you mean you tried? You showed up for  
2 work?

3 A I showed up for work wearing the jeans. They  
4 said, "No. Change your jeans."

5 Q So what did you do?

11:24:16

6 A I put on my Abercrombie jeans.

7 Q You brought your Abercrombie jeans with you?

8 A Ya.

9 Q All right. So you weren't penalized in any  
10 way?

11:24:31

11 A No, because I had the jeans with me.

12 Q Okay. Any other occasion that you wore  
13 non-Abercrombie clothing to work?

14 A Yes. Well, uhm, I wore, uhm... I tried to  
15 wear, uhm, high top Converse®, and I got sent home, but  
16 it was, uhm... it was high-top Converse® to the point  
17 where, like, you have to flip your jeans a certain way,  
18 and I'm, like, do it, and I bought jeans that were long,  
19 Abercrombie jeans that were long enough that went pretty  
20 far down and didn't look -- you couldn't tell the  
21 difference if I was wearing low tops or high tops. But  
22 I went to go bend down and tie my shoe, and I guess the  
23 thing came way up, and I was wear high tops. They were  
24 black and white, and they sent me home.

11:24:41

11:24:59

25 Q To change?

11:25:12

ARIK SILVA - 11/11/2014

Page 107

1 A No. They just sent me home. They said, "Don't  
2 come back."

3 Q Okay. Any other situations?

4 A No. I kind of just learned my lesson after  
5 that and then just wore Abercrombie clothing.

11:25:28

6 Q And the look policy specifically states low  
7 top --

8 A Yes.

9 Q -- right?

10 A (Indicating).

11:25:34

11 Q Correct?

12 A Yes, correct.

13 Q All right. Did you ever see anybody else at  
14 work wear non-A&F clothes?

15 A John -- a guy named Johnny, he tried, and he  
16 got sent home.

11:25:44

17 Q Do you know what he tried to wear?

18 A Jeans. It was -- from what I remember with the  
19 jeans, they just looked like regular, dark, blue jeans.

20 There wasn't anything crazy about them or patches or  
21 anything. And they said, "No, you can't wear those,"  
22 and they sent him home.

11:25:57

23 Q Okay. Anybody else?

24 A Let's see. I believe Alex Brown, he tried to  
25 wear shorts that were actually Abercrombie, and they

11:26:13



ARIK SILVA - 11/11/2014

Page 108

1 tried to send him home because they weren't, like,  
2 within that style, but he protested, and he got to wear  
3 the shorts. Other than that, he wasn't sent home,  
4 though, other than Barry -- or Johnny, he got sent home.

5 Q Anybody else?

11:26:26

6 A Uhm... not that I recall.

7 Q All right. Sitting here today, are you able to  
8 definitively tell me one way or another whether anybody  
9 in the store working at the same time period that you  
10 did ever wore non-A&F clothing to work without issue?

11:26:41

11 A No. Every time I ever heard of anyone try to  
12 wear non-A&F clothing, they got sent home.

13 Q Okay. Well, you don't know whether that holds  
14 true across all employees that worked at the same time  
15 during your employment, correct?

11:26:58

16 A Yes. I mean, I've seen -- I've heard, like,  
17 other employees, like, "Oh, what happened to him?"  
18 "He got sent home. He wasn't wearing A&F  
19 clothing."

20 So all the managers in the store enforce that  
21 kind of rule. So I don't know if that answers your  
22 question.

11:27:10

23 Q It really doesn't.

24 A All right.

25 Q I'm just -- you admit that it's possible that

11:27:16

ARIK SILVA - 11/11/2014

Page 109

1 during the course of your employment, somebody wore  
2 non-A&F clothing to work without issue?

3 A I've never seen it.

4 Q But you admit that it's possible?

5 A Ya, I guess anything is possible.

11:27:26

6 Q Okay. And to the extent that somebody  
7 testifies that they worked at Third Street Promenade and  
8 wear or wore A&F -- non-A&F clothing to work without  
9 issue, your response would just be that you had a  
10 different experience, right?

11:27:42

11 MR. JAMES: Objection. Hypothetical.

12 THE WITNESS: Can you -- can you, please --

13 BY MR. GARCIA:

14 Q Ya.

15 To the extent somebody offers testimony in this  
16 case and says, Hey, I wore or wear non-A&F clothing to  
17 work at Third Street Promenade without issue, you would  
18 just say, "Well, I had a different experience"?

11:27:48

19 A For Abercrombie or just any retail joint on the  
20 Third Street Promenade?

11:28:02

21 Q Third -- at Abercrombie?

22 A Oh, uhm... ya. I wouldn't -- unless I came  
23 across that, it would be my experience.

24 Q You would just say, "I had a different  
25 experience from that person"?

11:28:12

ARIK SILVA - 11/11/2014

Page 135

1 Q Can you stand up and just?

2 A Ya.

3 Q Are they black jeans?

4 A Ya.

5 Q Oh, okay.

13:02:22

6 A Black jeans, and you can wear any accessory you  
7 want.

8 Q Now, do they -- do they provide those clothes  
9 to you at Lush?

10 A No, no. They just kind of assume somewhere in  
11 their closet, you own a white shirt, black shirt, or  
12 black pants or white pants.

13:02:32

13 Q But it has to be black or white. It can't be  
14 any other type of color?

15 A Ya, has to be black or white.

13:02:50

16 Q When you moved over to the impact position --

17 A Uhm-hum.

18 Q -- do you have any knowledge regarding whether  
19 you had additional footwear options to choose from in  
20 terms of what you could wear to work?

13:03:34

21 A No.

22 Q Did you review the style guides when they would  
23 come out?

24 A The AAA Guides?

25 Q AAA Style Guides?

13:04:20

ARIK SILVA - 11/11/2014

Page 136

1 A Whenever we were told that we had to purchase  
2 the new ones, ya.

3 Q Well, you know that the AAA Style Guides were  
4 issued several times a year, correct?

5 A Yes.

13:04:36

6 Q Okay. So did you -- did you review the guide  
7 each time it came out --

8 A Just --

9 Q -- or you don't know?

10 A Just when my knowledge was -- or when the  
11 knowledge was given to me that we had to update our  
12 clothing, then I reviewed them.

13:04:45

13 Q And when you reviewed them, whenever you did  
14 so, you actually held the physical document in your hand  
15 and flipped through it?

13:04:59

16 A Yes. They would post it on the corkboard.

17

18 (Exhibit 41 marked for identification.)

19 (Exhibit 42 marked for identification.)

20

13:06:04

21 Q You have been handed Exhibits 41 and 42 to your  
22 deposition.

23 Do you see that?

24 A Uhm-hum.

25 Q Yes?

13:06:09

ARIK SILVA - 11/11/2014

Page 150

1 different, more than that, shirts reflected on here.

2 A I see button-ups, sweaters, and henleys.

3 Q And a T-shirt?

4 A And, ya, I guess a T-shirt.

5 Q Okay. And numerous different types of jeans?

13:21:31

6 A Different styles, ya.

7 Q All right. And... certainly a lot of different  
8 color options, correct?

9 A Yes.

10 Q Why did you decide to purchase the jeans that  
11 you bought and the shirt that you bought?

13:21:48

12 A It was -- Kavon was with me, I believe.

13 Q I'm sorry?

14 A I believe it was either Kavon or one of the  
15 managers would walk around with us and then it was just  
16 -- I just grabbed something.

13:22:26

17 Q You just picked whatever you felt like picking?

18 MR. JAMES: Objection. Vague and ambiguous.

19 BY MR. GARCIA:

20 Q I'm sorry?

13:22:36

21 A Didn't have shorts. I picked jeans, and I just  
22 grabbed a shirt.

23 Q Okay. So you just picked whatever you felt  
24 like picking?

25 MR. JAMES: Objection. Misstates his

13:22:44

ARIK SILVA - 11/11/2014

Page 151

1 testimony.

2 THE WITNESS: I picked the AAAs that were  
3 available. Whatever was available AAA-wise, I grabbed  
4 those.

5 BY MR. GARCIA:

13:22:52

6 Q You picked whatever was reflected in the AAA  
7 Style Guide that you felt like picking, true?

8 A Yes. I picked out a button-up shirt and a pair  
9 of jeans.

10 Q All right.

13:23:01

11 A It was October.

12

13 (Exhibit 45 marked for identification.)

14

15 Q I've handed you what's been marked as  
16 Exhibit 44 --

13:23:43

17 COURT REPORTER: 45.

18 BY MR. GARCIA:

19 Q -- is that right? 45.

20 This is the Spring Preview 2013 Style Guide,  
21 right?

13:23:53

22 A Yes.

23 Q And this was issued on or about December 15,  
24 2012, right?

25 A Yes.

13:24:02

ARIK SILVA - 11/11/2014

Page 179

1 A I had a heather gray shirts.

2 Q You are talking about the one you purchased on  
3 January 29, 2014?

4 A Yes.

5 Q Okay. What other shirt did you have at that  
6 time that, in your view, was consistent with the AAA  
7 guideline?

14:07:36

8 A I had the denim shirt.

9 Q Okay. So it's your testimony that that denim  
10 shirt continued to be consistent with the AAA guideline  
11 as of January 29, 2014?

14:07:48

12 A I don't know. Not -- I'm not very sure. All I  
13 remember, regardless of what's on this thing, I've never  
14 seen this document before, okay. They didn't tell me  
15 like, oh, you recorded this. Uhm, we record the shirt  
16 when you bought that.

14:08:05

17 Uhm, I bought clothes when they told me I had  
18 to buy clothes. When they said, "You need to change  
19 your shirt, go pick out a new one," I did.

20 If they didn't tell me that, I didn't buy it.  
21 I bought -- I bought AAAs because I had to. If I didn't  
22 have that -- if I didn't have that, whatever -- whatever  
23 piece of clothing they said I needed, then I would get  
24 sent home.

14:08:17

25 Q Well, nobody ever told you you need to go pick

14:08:30

ARIK SILVA - 11/11/2014

Page 180

1 out two shirts, correct?

2 A What? When?

3 Q Listen to my question. Nobody ever told you  
4 you have to go pick out two shirts, correct? You don't  
5 need to look at that.

14:08:41

6 A For what time?

7 Q Any time during your employment. Nobody ever  
8 said, "Arik, you need to go pick out two shirts to wear  
9 to work," correct?

10 A Correct.

14:08:49

11 Q Okay. And certainly, nobody told you you to go  
12 pick out more than two shirts to wear to work, correct?

13 A For -- I think -- you are kind of confusing me  
14 with that question. I'm being honest. I bought the  
15 shirt when they told me to buy the shirts.

14:09:02

16 Q I understand.

17 A When they said, "You need to buy this" -- my  
18 orientation, they said, "You need to buy some clothes in  
19 order to work."

20 I said, "Okay." So I bought these.

14:09:10

21 When they said, "You need to change that," I  
22 changed it. When they said, "You need to change your  
23 jeans," I changed the jeans.

24 Q Okay.

25 A When -- the times -- said you can't wear the

14:09:19



ARIK SILVA - 11/11/2014

Page 181

1 denim shirt no more, you need to wear a different shirt,  
2 I'm pretty sure I bought the HTR gray shirt.

3 Q Okay. Given the ease with which you rattled  
4 all that off, you ought to be able to tell me whether  
5 you can remember a single time where anybody ever said, 14:09:30  
6 "Arik, no need to buy two shirts." And you told me, no,  
7 nobody ever said that.

8 Correct.

9 A I just don't understand what you mean by two  
10 shirts. When? 14:09:40

11 Q Any time.

12 A Ya. They told me I had to buy shirts  
13 whenever --

14 Q Two?

15 A Not two at the exact same time. 14:09:47

16 Q That's what I'm talking about. Nobody ever  
17 told you at any particular time that they, in your view,  
18 told you you needed to buy clothes, that you needed to  
19 buy more than one shirt, correct?

20 A Not at one time. It was over my period of 14:09:58  
21 working at Abercrombie that I had to buy a different  
22 shirt.

23 Q Okay.

24 A So I did.

25 Q Stay with me. 14:10:05

ARIK SILVA - 11/11/2014

Page 232

1 Q Ya.

2 A I asked to take my rest period. And he said,  
3 "No, we will come to you."

4 And, uhm, I was, like, okay. And I waited, and  
5 they came to me and told me I could go on my break.

15:40:09

6 Q Okay. And I remember you saying that earlier  
7 today.

8 A Ya.

9 Q But that was a 4-hour shift?

10 A Yes.

15:40:17

11 Q Okay. My question that I just asked relates to  
12 shifts that you worked that were longer than 4 hours.

13 A So, 5 hours and above?

14 Q Well, anything longer than 4 hours.

15 A Okay.

15:40:26

16 Q All right. Do you recall ever asking a manager  
17 during any one of those shifts if you could go take a  
18 break, a rest break?

19 A Yes.

20 Q Okay.

15:40:34

21 A And the answer was no.

22 Q Okay. How many times did you ask that?

23 A I think just one.

24 Q Okay. And who did you ask?

25 A Can't specifically remember. It was probably

15:40:44

ARIK SILVA - 11/11/2014

Page 233

1 whatever head manager was at that time.

2 Q And what did you ask?

3 A I asked if -- if we got breaks regarding, uhm,  
4 if we got breaks regarding, uhm, like for 5 -- for  
5 4 hours and above more, if we got like a 10-minute break  
6 plus an unpaid, and they said, no, you just get a 30.

15:40:59

7 Q Do you recall when you asked that?

8 A I don't.

9 Q Would it have been earlier in your employment?

10 A It probably would have been earlier. I just  
11 asked out of pure curiosity.

15:41:11

12 Q Okay. So, your best recollection is that you  
13 asked that question early in your employment?

14 A Yes.

15 Q Did you ever ask again following that exchange?

15:41:24

16 A I don't remember.

17 Q You don't remember doing so?

18 A Yes. I don't remember doing so.

19 Q Okay. We've been through a lot today, but do  
20 you feel that we have discussed all of the reasons why  
21 you are suing the company relating to clothing?

15:41:42

22 A Yes.

23 Q Okay. Have we discussed all of the reasons why  
24 you are suing the company relating to the rest breaks?

25 A I believe so.

15:41:57

ARIK SILVA - 11/11/2014

Page 237

1 A Uhm... I don't know. It's been, like,  
2 five-something years, six years maybe.

3 Q Okay. Okay. Defense counsel asked a few  
4 questions about this earlier. I'm going to come at it  
5 from what I think is a slightly different angle --

15:53:15

6 A Okay.

7 Q -- which is rest breaks.

8 Can you tell me whether, during your employment  
9 at Abercrombie, you ever observed an Abercrombie  
10 employee taking two 10-minute rest periods in the same  
11 shift?

15:53:23

12 A No.

13 Q Okay. Can you tell me whether, during your  
14 employment at Abercrombie, you ever observed an  
15 Abercrombie employee take a 10-minute rest break and a  
16 30-minute meal period during the same shift?

15:53:37

17 A No.

18 Q Okay. And I would just like to clarify, for  
19 both of those last questions, were you saying, no, you  
20 had never observed that or no, you can't tell me?

15:53:54

21 A No, I never observed that.

22 Q Okay. Can you tell me whether, the best of  
23 your recollection, uhm, the videos you referenced  
24 earlier that you watched during your Abercrombie  
25 training or orientation, whether those videos contained

15:54:18

ARIK SILVA - 11/11/2014

Page 238

1 any, to the best of your recollection, information about  
2 either rest breaks or the look policy?

3 A No.

4 Q Okay. To the best of your knowledge, they  
5 didn't?

15:54:33

6 A Ya, no.

7 Q Okay. Can you tell me whether women working  
8 and girls working at the Abercrombie store, which you  
9 worked, were required to wear AAAs?

10 MR. GARCIA: Objection. Lack of foundation.  
11 Asked and answered.

15:54:56

12 THE WITNESS: Can you, please, repeat the  
13 question?

14 MR. JAMES: Can you read the question back,  
15 please?

15:55:03

16

17 (Requested text read by the reporter.)

18

19 MR. GARCIA: Same objections.

20 THE WITNESS: Yes.

15:55:17

21 BY MR. JAMES:

22 Q Okay. How do you know that?

23 A The -- I mean, the women and the guys worked  
24 together for orientation, and they -- they told everyone  
25 you have to get AAAs.

15:55:26